



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Via First-Class Mail

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One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

DEC -8 2015

RE: MURs 6563 and 6733
Aaron Schock

Dear Messrs. Kelner and Lawlor:

The Federal Election Commission notified your client, Representative Aaron Schock, on May 3, 2012, of a complaint in MUR 6563, and on May 8, 2013, of a complaint in MUR 6733, both of which alleged violations of the Federal Election Campaign Act of 1971, as amended, and provided your client with copies of the complaints.

After reviewing the allegations contained in the complaint, the responses you submitted on behalf of your client, and publicly available information, the Commission on November 19, 2015, found reason to believe that Representative Aaron Schock violated 52 U.S.C. § 30125(e). Additionally, the Commission found that there is no reason to believe that Representative Aaron Schock violated 52 U.S.C. § 30116(a). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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If you are interested in engaging in pre-probable cause conciliation, please contact Tanya Senanayake, the attorney assigned to this matter, at (202) 694-1571, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

1 FEDERAL ELECTION COMMISSION

2
3 RESPONDENT: Representative Aaron Schock

MURs 6563 and 6733

4
5 FACTUAL AND LEGAL ANALYSIS

6 I. INTRODUCTION

7 This matter arises from two Complaints that allege violations of the Federal Election
8 Campaign Act of 1971, as amended (“the Act”), arising from then-Representative Aaron
9 Schock’s (18th District, Illinois) purported solicitations of three contributions to the Campaign
10 for Primary Accountability Inc. (“CPA”), an independent-expenditure-only political committee
11 that supported Representative Adam Kinzinger’s candidacy in the 2012 primary election in
12 Illinois’s 16th Congressional District.

13 The Complaint in MUR 6563 alleges that Schock solicited a \$25,000 contribution from
14 then-Representative Eric Cantor (7th District, Virginia) in violation of 52 U.S.C. §§ 30125(e)
15 and 30116(a). The Complaint recites Schock’s own description, as reported in an article by *Roll*
16 *Call*,¹ of a conversation he had with Cantor in or around March 2015: “I said, ‘Look, I’m going
17 to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign’ and said,
18 ‘Can you match that?’ And he said, ‘Absolutely.’”² According to the Complaint, shortly after
19 this conversation between Schock and Cantor, Cantor’s leadership PAC — Every Republican Is
20 Crucial (ERICPAC) —made a \$25,000 contribution to CPA. The Complaint contends that
21 Schock’s communication with Cantor was a “solicitation” under the Act that exceeded the limits
22 imposed under §§ 30125(e) and 30116(a).

¹ See Compl. at 2 n.1, MUR 6563 (quoting John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012 [hereinafter Stanton, *Cantor Gave \$25K*], available at http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html).

² *Id.* (alteration in original).

1 Like the Complaint in MUR 6563, the Complaint in MUR 6733 alleges that Schock
2 impermissibly solicited a \$25,000 contribution from Cantor. It further alleges that (1) Schock
3 impermissibly solicited, and his campaign staff impermissibly directed, a \$25,000 contribution to
4 CPA from the 18th District Republican Central Committee (Federal Account) ("18th District
5 Committee"), a local party committee in Schock's congressional district, and (2) Schock
6 impermissibly solicited a \$35,000 contribution to CPA from an individual named David Herro.
7 The Complaint in MUR 6733 bases its allegations on an Office of Congressional Ethics ("OCE")
8 investigative report ("OCE Report") submitted to the House of Representatives Committee on
9 Ethics ("House Ethics").³ According to the OCE Report, OCE investigated Schock's alleged
10 "solicit[ation of] contributions for an independent expenditure-only political committee in excess
11 of \$5,000 per donor, in violation of federal law, House rules, and standards of conduct."⁴

³ See Compl. at 2, Attach. A, MUR 6733; OCE Review No. 12-9525, adopted Aug. 24, 2012, *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, *available at* <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

⁴ See OCE Report at 1. OCE's investigation included interviews and the review of documents obtained from Schock, Cantor, CPA personnel, and other persons. The OCE Report refers to Cantor as "Representative 1." See *id.* at 4 n.1, 5. On the basis of its investigation, OCE found that Schock solicited Cantor to contribute \$25,000 to CPA and found "substantial reason to believe" that Schock's campaign committee solicited the 18th District Committee to contribute \$25,000 to CPA, and recommended that House Ethics further review the allegation. *Id.* at 21. According to a House Ethics press release from February 6, 2013, House Ethics will "gather additional information necessary to complete its review." STATEMENT OF THE CHAIRMAN AND RANKING MEMBER OF THE COMMITTEE ON ETHICS REGARDING REPRESENTATIVE AARON SCHOCK (Feb. 6, 2013), *available at* <http://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-aaro-0>. House Ethics also noted that "the mere fact of conducting further review of a referral . . . does not itself indicate that any violation has occurred, or reflect any judgment on behalf of the Committee." *Id.*; see also OCE Report at 3 ("The [OCE] Board notes that these findings do not constitute a determination that a violation actually occurred."). To date, the Commission is unaware of the status of House Ethics' review of the OCE Report.

1 Schock denies that any of the alleged communications at issue resulted in a violation of
2 the Act's solicitation restrictions.⁵

3 Based on the available information before it, the Commission finds reason to believe that
4 Schock impermissibly solicited contributions from Cantor and the 18th District Committee in
5 violation of 52 U.S.C. § 30125(e). The Commission could not agree by the required four votes
6 as to the disposition of the allegation that Schock impermissibly solicited David Herro in
7 violation of § 30125(e). The Commission finds no reason to believe, however, that Schock made
8 an excessive contribution in violation of § 30116(a).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Factual Summary**

11 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
12 Congressional District primary election held on March 20, 2012. Schock, who at the time was a
13 member of Congress, supported Kinzinger and sought to assist him.⁶ Schock states that he
14 learned that CPA was broadcasting advertisements opposing Manzullo and "believed that CPA
15 needed additional funds to be able to air the advertisements again prior to the election."⁷

⁵ See Schock Resp., MUR 6563 ("Schock MUR 6563 Resp."); Schock Resp. at 1, 4-6, MUR 6733 ("Schock MUR 6733 Resp."). Schock also responded to OCE and House Ethics, denying any violation and making the same arguments he has presented to the Commission here. See Letter from Robert K. Kelner, Counsel, to Deborah Mayer, House Committee on Ethics (Dec. 6, 2012) ("Schock Letter to House Ethics"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>; Letter from Robert K. Kelner to Kedric Payne, OCE (July 17, 2012) ("Schock Letter to OCE"), available at <http://ethics.house.gov/sites/ethics.house.gov/files/Rep.%20Schock%20Response.pdf>.

⁶ See Schock MUR 6563 Resp. at 2. Schock's responses to the Commission are unsworn. His statements to OCE are also unsworn; according to OCE, he refused to sign a written acknowledgment of the warning that his OCE interview statements were subject to the False Statements Act, see 18 U.S.C. § 1001. See OCE Mem. of Interview of Schock ¶¶ 1-2, OCE Report, Ex. 9 at 12-9525_0089 ("Schock MOI").

⁷ Schock MUR 6563 Resp. at 2.

Schock's first-person description of relevant events was quoted in the *Roll Call* article cited in the Complaint in MUR 6563:

"The final week of the campaign, it got very tight, it was neck and neck. I was trying to do everything I could to help the Kinzinger campaign and reached out to the committee that was running ads in support of them."

"They were basically running the television ads for him, [and] I asked if I could specify a donation to them," to be used only in the Illinois primary.

"And they said I could."⁸

The Complaints in this matter assert that Schock solicited the following three contributions to CPA in March 2012: (1) \$25,000 from the 18th District Committee; (2) \$25,000 from ERICPAC; and (3) \$35,000 from David Herro Trust. CPA Development Coordinator Hannah Christian states that, to her knowledge, no one from CPA requested these contributions.⁹

Schock's Campaign Director, Tania Hoerr, made the contribution on the 18th District Committee account at the direction of Schock's Chief of Staff, Steve Shearer.¹⁰ Hoerr says that she:

⁸ Stanton, *Cantor Gave \$25K*, *supra* note 1 (alteration in original). CPA aired and distributed independent expenditure advertisements opposing Manzullo totaling \$239,531.68, all during a period from March 8 through March 19, 2012. The only expenditures for television advertising — in the amounts of \$15,000; \$25,000; and \$35,000 respectively — all occurred on March 16 or 17, 2012, after or on the same day as the contributions at issue in this matter. See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012). CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support that the Campaign for Primary Accountability is running." E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM), OCE Report Ex. 23 at 12-9525_0140. CPA also disclosed an \$18,000 independent expenditure on March 17, 2012, to the same vendor for a radio advertisement, the only radio communication among CPA's independent expenditures opposing Manzullo. See Amended April Monthly Report at 39.

⁹ See OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26, OCE Report Ex. 6 at 12-9525_0028 ("Christian MOI").

¹⁰ See OCE Mem. of Interview of Tania Hoerr ¶¶ 3, 10, OCE Report Ex. 11 at 12-9525_0100 ("Hoerr MOI"). The OCE Report generally refers to Hoerr and Shearer by position rather than name, but they are identified in the Memoranda of Interviews of other witnesses. See, e.g., Christian MOI ¶ 19; Hoerr MOI ¶ 6. Hoerr is Schock's sister. See OCE Report at 15 n.62.

- had the necessary banking information to make the online contribution because she established the 18th District Committee account and routinely deposits money into its account from Schock's joint fundraising committee, Schock Victory Committee ("Victory Committee");¹¹
- did not recall needing to get approval from anyone other than Shearer in order to make the contribution, and did not recall speaking to 18th District Committee Chairman Mike Bigger prior to making the contribution;¹²
- was not sure why Bigger did not make the contribution online himself;¹³
- did not speak to Schock at that time about the contribution and did not recall if Shearer told her if anyone requested that the contribution be made;¹⁴ and
- learned from CPA that it would take a significant amount of time to process the online contribution she made, and that Shearer contacted Bigger for him to make the contribution from the 18th District Committee via a wire transfer.¹⁵

The online contribution was duly rescinded and replaced by a wire transfer from the 18th District Committee.¹⁶ Shearer says that Bigger contacted him to ask for the wire transfer information after Bigger and Schock had a conversation about eight or nine days prior to the Kinzinger primary election.¹⁷

¹¹ See Hoerr MOI ¶ 12. The Victory Committee amended its Statement of Organization on March 9, 2011, to add the 18th District Committee as a participating committee along with Schock for Congress (Schock's principal campaign committee), GOP Generation Y Fund (Schock's leadership PAC), and the National Republican Congressional Committee.

¹² *Id.* ¶ 13.

¹³ *Id.* ¶ 15.

¹⁴ *Id.* ¶ 14.

¹⁵ *Id.* ¶¶ 16-19.

¹⁶ See Hoerr MOI ¶ 19; OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶¶ 14-15, OCE Report Ex. 4 at 12-9525_0021 ("Story MOI").

¹⁷ OCE Mem. of Interview of Steve Shearer ¶ 18, OCE Report Ex. 12 at 12-9525_0106 ("Shearer MOI").

1 Schock contends that shortly before the March 20 primary election, he “learned that the
2 18th District Republican Central Committee . . . was planning to make a \$25,000 donation to
3 CPA from its federal account.” Schock says that his “campaign staff made initial technical
4 attempts to assist the 18th District Committee in making the Committee’s contribution,” but that
5 neither he nor his staff directed the Committee’s contribution to CPA.¹⁸ Schock also asserts that
6 he did not solicit the 18th District Committee’s contribution to CPA,¹⁹ and he told OCE that he
7 has never requested that the 18th District Committee contribute to any political campaigns.²⁰
8 Rather, Schock says that Bigger told him that Bigger intended to make a donation to CPA from
9 the 18th District Committee.²¹ Schock also states that although he did not solicit Bigger to make
10 the donation using 18th District Committee funds, he was pleased to hear that Bigger would be
11 doing so and he did not object.²²

12 Schock says that he assisted with establishing the 18th District Committee’s federal
13 account and that he “helps raise funds for” the 18th District Committee’s federal account through

¹⁸ See Schock MUR 6733 Resp. at 2, 8.

¹⁹ See Schock MUR 6563 Supp. Resp. at 1.

²⁰ Schock MOI ¶ 15.

²¹ See Schock MUR 6563 Supp. Resp. at 1; *see also* Schock Letter to House Ethics at 3; Schock Letter to OCE at 4. Schock told OCE that he learned approximately ten days before Kinzinger’s primary election in March 2012 that the 18th District Committee contributed to CPA and that Bigger told him about the contribution. Schock MOI ¶¶ 19-20. Schock’s Chief of Staff told OCE that Bigger wanted to make a contribution to CPA from the 18th District Committee account and that Schock did not ask Bigger to contribute. Shcarer MOI ¶¶ 20-21. Counsel for Schock contends that Bigger corroborated this account in a letter to House Ethics. Schock Letter to House Ethics at 3. According to OCE, Bigger’s counsel submitted a letter to OCE “suggesting that Mr. Bigger decided to contribute \$25,000 from [the] 18th District Republican Central Committee to CPA and then informed Representative Schock of the decision.” OCE Report at 16 n.68. OCE refused to consider this letter as evidence, *see id.*, and Bigger did not cooperate with the OCE investigation. *See id.* at 5-6, 16, 20-21.

²² See Schock MUR 6563 Supp. Resp. at 1-2.

1 his Victory Committee,²³ but he does not hold any positions on the 18th District Committee and
2 does not have the authority to make decisions concerning how it spends its funds.²⁴

3 According to Schock, “[w]ith knowledge of the \$25,000 commitment from the 18th
4 District Committee, [he] reached out to Rep. Cantor to see if Rep. Cantor could raise additional
5 funds to support pro-Kinzinger ads by CPA.”²⁵ As noted, Schock was quoted in the *Roll Call*
6 article as recounting his conversation with Cantor as follows: “I said, ‘Look, I’m going to do
7 \$25,000 [specifically] for the Kinzinger campaign for the television campaign’ and said, ‘Can
8 you match that?’” “And he [Cantor] said, ‘Absolutely.’”²⁶ In his response, Schock
9 acknowledges that he “said something along the lines of” this reported statement.²⁷ Schock told
10 OCE that he believed he said something like “We’re doing \$25,000[;] would you be able to do
11 \$25,000[?],” that “We’re doing \$25,000” referred to the 18th District Committee’s \$25,000
12 contribution to CPA, and that he referred to it as “we” because it was a donation being made
13 within his district.²⁸

²³ See Schock MOI ¶ 14; Schock MUR 6563 Resp. at 2.

²⁴ See Schock MUR 6563 Resp. at 2. The 18th District Committee filed its initial Statement of Organization with the Commission on February 25, 2011, and through March 31, 2012, disclosed total receipts of \$132,061.20, all but \$6.00 of which consisted of transfers from the Victory Committee. Prior to its \$25,000 contribution to CPA, the 18th District Committee had made no contributions to other federal committees and had disbursed to state candidates a total of \$7,500. See 18th Dist. Comm. 2012 April Quarterly Report at 4, 9 (Apr. 13, 2012) (disclosing one \$500 contribution to a state committee); 18th Dist. Comm. 2011 April Quarterly Report at 4, 9-11 (Apr. 7, 2011) (disclosing \$7,000 in contributions to state committees).

²⁵ Schock MUR 6563 Resp. at 2.

²⁶ See Stanton, *Cantor Gave \$25K*, *supra* note 1. The bracketed term “[specifically]” appears in Schock’s quote in the article. The article incorrectly reported that Schock’s leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

²⁷ Schock MUR 6563 Resp. at 2.

²⁸ Schock MOI ¶¶ 23-24.

1 ERICPAC contributed \$25,000 to CPA on March 16, 2012.²⁹ Cantor's campaign
2 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
3 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
4 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
5 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
6 made a contribution with the understanding that those funds would be used only in the effort to
7 support Congressman Kinzinger."³⁰

8 In addition to the ERICPAC and 18th District Committee \$25,000 contributions to CPA,
9 Schock was also involved in David Herro's \$35,000 contribution to CPA. Herro has organized
10 fundraisers for Schock, including during March 2012, the same month as Schock's contact with
11 Herro regarding a contribution to CPA.³¹ Herro also contributed \$15,000 to Schock's Victory
12 Committee in 2010 and \$10,000 to the Committee in 2011.³² Schock says that he contacted
13 Herro in March 2012 about contributing to CPA.³³ Schock and Herro each say that Schock
14 contacted Herro and told him that Kinzinger's election was close and asked Herro if he could
15 help but did not suggest any amount.³⁴ Herro told Schock that he would help and that he would

²⁹ ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

³⁰ Stanton, *Cantor Gave \$25K*, *supra* note 1. Cantor described Schock's request in similar terms: Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race. See OCE Mem. of Interview of Cantor ¶ 8, OCE Report Ex. 8 at 12-9525_0087 ("Cantor MOI").

³¹ See OCE Mem. of Interview of David Herro ¶¶ 4, 6, 9-13, OCE Report Ex. 18 at 12-9525_0124 ("Herro MOI"). The OCE Report refers to Herro as "Donor 1."

³² See Victory Committee 2010 July Quarterly Report at 6; 2011 October Quarterly Report at 29.

³³ See Schock MOI ¶ 28.

³⁴ *Id.* ¶¶ 29-30; Schock MUR 6733 Resp. at 3, 7; Herro MOI ¶¶ 9, 11. Schock also denies that his staff suggested, requested, or recommended any contribution amounts. See Schock Letter to OCE at 5.

attempt to have others help.³⁵ Herro contributed \$35,000 to CPA on March 14, 2012, after receiving information regarding CPA from Shearer, Schock's Chief of Staff,³⁶ and from CPA, including that CPA wanted to raise \$100,000 in three days.³⁷ Herro says he solicited three individuals to contribute to CPA, one of whom, Anne Dias Griffin, contributed \$30,000 to CPA on March 16, 2012.³⁸ Griffin acknowledges that Herro told her that he was contributing \$35,000 to CPA to support Kinzinger in his primary election.³⁹ Griffin and Schock each say that Schock did not ask Griffin to contribute.⁴⁰

B. Legal Analysis

1. Applicable Law

Under the Act and Commission regulations, federal candidates and officeholders; agents of federal candidates and officeholders; and entities directly or indirectly established, financed, maintained, controlled by, or acting on behalf of federal candidates or officeholders cannot “solicit” or “direct” funds in connection with an election for federal office, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

³⁵ See Herro MOI ¶ 10; Schock MOI ¶¶ 30-31.

³⁶ Shearer says that he provided CPA's wire transfer information to Herro at Schock's request. *See* Shearer MOI ¶¶ 23, 25-26.

³⁷ See Herro MOI ¶¶ 12-16. The David Herro Trust (the “Trust”) made the \$35,000 contribution to CPA. See CPA 2012 Amended April Monthly Report at 8. Herro explained that the Trust is his bank account and he is the sole member of the Trust. See Herro MOI ¶ 18.

³⁸ See *id.* ¶ 17; OCE Mem. of Interview of Anne Dias Griffin ¶¶ 7-8, OCE Report Ex. 20, 12-9525_0131 (“Griffin MOI”); CPA 2012 Amended April Monthly Report at 10. The OCE Report refers to Griffin as “Donor 2.”

³⁹ See Griffin MOI ¶¶ 8-9.

⁴⁰ See *id.* ¶ 10; Schock MOI ¶ 32.

1 Commission regulations define "to solicit" to mean "to ask, request, or recommend,
2 explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or
3 otherwise provide anything of value." 11 C.F.R. § 300.2(m). A solicitation is any oral or written
4 communication, made either expressly or implicitly, "that [when] construed as reasonably
5 understood in the context in which it is made, contains a clear message asking, requesting, or
6 recommending that another person make a contribution, donation, transfer of funds, or otherwise
7 provide anything of value. A solicitation may be made directly or indirectly." *Id.* "By
8 specifying that a communication must be construed as reasonably understood in the context in
9 which it is made, the definition of 'to solicit' contains an objective test that takes into account all
10 appropriate information and circumstances while avoiding subjective interpretations." Final
11 Rules and Explanation and Justification for Definitions of "Solicit" and "Direct," 71 Fed. Reg.
12 13,926, 13,929 (Mar. 20, 2006) (italics omitted). "A solicitation does not include mere
13 statements of political support or mere guidance as to the applicability of a particular law or
14 regulation." 11 C.F.R. § 300.2(m).⁴¹

15 "[T]o direct" under Commission regulations means "to guide, directly or indirectly, a
16 person who has expressed an intent to make a contribution, donation, transfer of funds, or
17 otherwise provide anything of value, by identifying a candidate, political committee or
18 organization, for the receipt of such funds, or things of value." 11 C.F.R. § 300.2(n). "The
19 contribution, donation, transfer, or thing of value may be made or provided directly or through a
20 conduit or intermediary." *Id.* As with solicitations, the mere provision of information or

⁴¹ Commission regulations provide specific examples of solicitations as well as statements that do not constitute solicitations. See 11 C.F.R. § 300.2(m)(1)-(3).

1 guidance as to the applicability of a particular law or regulation does not constitute direction.

2 *See id.*

3 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
4 calendar year. 52 U.S.C. § 30116(a)(1)(C). The Act also prohibits any candidate or political
5 committee from knowingly accepting any contribution in violation of § 30116. *Id.* § 30116(f).

6 Following the decisions in *Citizens United v. FEC*⁴² and *SpeechNow.org v. FEC*,⁴³ the
7 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
8 committees, corporations, and labor organizations may make unlimited contributions to
9 independent expenditure-only political committees, and that such committees may solicit
10 unlimited contributions from such persons. Thus, committees such as CPA that have registered
11 with the Commission may accept unlimited contributions from individuals, political committees,
12 corporations, and labor organizations.⁴⁴

13 In Advisory Op. 2011-12 (Majority PAC), the Commission clarified that the solicitation
14 restrictions under § 30125(e) remain applicable to contributions solicited by federal candidates,
15 officeholders, and other covered persons after *Citizens United* and *SpeechNow.org*.⁴⁵ Therefore,
16 as set forth in § 30125(e), such persons only may solicit contributions of \$5,000 or less for
17 independent expenditure-only political committees.

⁴² 558 U.S. 310 (2010).

⁴³ 599 F.3d 686 (D.C. Cir. 2010).

⁴⁴ See Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), *available at* <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

⁴⁵ Advisory Op. 2011-12 at 4. *Cf.* Advisory Op. 2012-34 (Freedom PAC) (concluding that a principal campaign committee of a federal candidate may use campaign funds to make a contribution of \$10,000 or more to an independent-expenditure-only political committee).

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2. Allegations that Rep. Schock Solicited Contributions from Cantor and the
18th District Committee in Violation of § 30125(e)

a. ERICPAC's \$25,000 Contribution to CPA

As discussed, the *Roll Call* article quotes Schock as describing his conversation with Cantor concerning a possible contribution to CPA thus: "I said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television campaign' and said, 'Can you match that?' And he said, 'Absolutely.'"⁴⁶ The article also quotes Cantor's spokesperson as saying that "Cantor was asked by Congressman Schock to contribute to an organization that was supporting Adam Kinzinger in the Illinois election of March 20."⁴⁷ In light of these statements, the Complaints in this matter allege that Schock impermissibly solicited \$25,000 from Cantor.⁴⁸

Schock's Response recognizes the Commission's conclusion in AO 2011-12 (Majority PAC) that federal officeholders remain subject to § 30125(e)'s prohibition on soliciting contributions outside the limitations and prohibitions of the Act, but it asks that the Commission decide this matter on the "narrow ground" that Schock's communication to Cantor was not a solicitation.⁴⁹ Schock asserts that he "reached out to Rep. Cantor to see if Rep. Cantor could raise additional funds to support pro-Kinzinger ads by CPA."⁵⁰ He argues that he did not solicit a contribution from Cantor because he merely "asked whether Rep. Cantor could match a fundraising target of \$25,000."⁵¹

⁴⁶ See Stanton, *Cantor Gave \$25K*, *supra* note 1 (alteration in original).

⁴⁷ *Id.*

⁴⁸ Compl. at 1-2, 5, MUR 6563; Compl. at 2-4, MUR 6733.

⁴⁹ Schock MUR 6563 Resp. at 1, 4.

⁵⁰ *Id.* at 2.

⁵¹ Schock MUR 6563 Resp. at 4.

1 Schock's statement to Cantor that Shock was "going to do \$25,000" and asking Cantor if
2 he could "match that" amount, when "construed as reasonably understood in the context in
3 which it [was] made," could only reasonably have been understood — as Cantor apparently in
4 fact did — as a "solicitation" requesting Cantor to donate \$25,000 to CAP. *See* 11 C.F.R.
5 § 300.2(m); *see also* Final Rules and Explanation and Justification for Definitions of "Solicit"
6 and "Direct," 71 Fed. Reg. at 13,929 (explaining the objective test within the definition of "to
7 solicit").

8 Schock also argues that application of § 30125(e) to Member-to-Member
9 communications like his with Cantor would violate the First Amendment to the U.S. Constitution
10 because there exists no risk of corruption when one Member asks another Member to contribute
11 and the second Member does so with funds subject to the Act's limitations and prohibitions.⁵²
12 Under the law, however, there is reason to believe that 52 U.S.C. § 30125(e) has been violated.

13 b. 18th District Committee's \$25,000 Contribution to CPA

14 The Complaint in MUR 6733 alleges that Schock impermissibly solicited, and his
15 campaign staff impermissibly directed, a \$25,000 contribution to CPA from the 18th District
16 Committee.⁵³ Schock denies that his staff directed the contribution, asserting that his staff's
17 involvement in the "mechanics of making the contribution" does not amount to "direction" under
18 section 300.2(n) of the Commission's regulations.⁵⁴ The Commission agrees that Schock's Chief
19 of Staff, Shearer, does not appear to have directed the contribution in that he did not provide the
20 18th District Committee "with the identity of an appropriate recipient" after the Committee had
21 "already expressed an intent to make a contribution or donation, but lack[ed] the identity of an

⁵² Schock MUR 6563 Resp. at 5-7.

1 appropriate candidate, political committee or organization to which to make that contribution or
2 donation.”⁵⁵

3 Schock also denies soliciting the \$25,000 contribution the 18th District Committee made
4 to CPA, yet the available information before the Commission provides reason to believe that
5 Schock in fact solicited the contribution in violation of § 30125(e). Schock’s communication
6 with Cantor, for instance, indicates that he was involved in inducing the 18th District Committee
7 contribution to CPA. Schock acknowledges that when he told Cantor “I’m going to do
8 \$25,000,”⁵⁶ he was referencing the 18th District Committee’s \$25,000 contribution to CPA.⁵⁷
9 Schock’s use of the pronoun “I” reflects his personal involvement in getting the 18th District
10 Committee to make the contribution, such that there is reason to believe that Schock “ask[ed],
11 request [ed] or recommend[ed]” that the 18th District Committee make the contribution.⁵⁸ See
12 11 C.F.R. § 300.2(m).

13 Also supporting reason to believe that Schock solicited the 18th District Committee’s
14 contribution are the facts that Schock helped to establish the Committee’s federal account,⁵⁹ that
15 he had provided over 95% of the Committee’s receipts through his Victory Committee by the

⁵³ Complaint at 4, MUR 6733.

⁵⁴ Schock MUR 6733 Resp. at 8.

⁵⁵ Final Rules and Explanation and Justification for Definitions of “Solicit” and “Direct,” 71 Fed. Reg. at 13,932.

⁵⁶ See Stanton, *Cantor Gave \$25K*, *supra* note 1.

⁵⁷ See Schock MOI ¶ 24.

⁵⁸ And even if Schock’s statement to Cantor is framed as “We’re doing \$25,000” — as Schock framed it in his OCE interview, *id.*, it still indicates Schock’s involvement in helping secure the contribution from the 18th District Committee.

⁵⁹ See Schock MOI ¶ 14.

1 time of the Committee's contribution, that it had not made a contribution to another federal
2 committee to date, and that its donations to nonfederal candidates totaled \$7,500 to date.⁶⁰ The
3 18th District Committee contributed \$25,000 to CPA, about 24% of its cash-on-hand. These
4 circumstances indicate that the 18th District Committee would not have made such a large
5 contribution — its first federal contribution — without a request from Schock, the individual
6 who provided nearly all of its funding.

7 Under these circumstances, the Commission finds it has reason to believe that Schock
8 asked, requested, or recommended that the 18th District Committee contribute \$25,000 to CPA,
9 thus soliciting a contribution in violation of 52 U.S.C. § 30125(e). *See* 11 C.F.R. § 300.2(m).

10 3. Allegations that Rep. Schock impermissibly solicited the \$35,000
11 contribution from David Herro

12 The Complaint in MUR 6733 alleges that Schock impermissibly solicited the
13 contribution David Herro made to CPA without limiting the amount to \$5,000 in permissible
14 funds.⁶¹ The Commission could not agree by the required four votes as to the disposition of the
15 allegation that Schock impermissibly solicited David Herro in violation of § 30125(e).

16 4. Allegation that Rep. Schock Made an Excessive Contribution

17 Schock also is alleged to have himself made an excessive contribution. The available
18 information before the Commission, however, does not indicate that Schock made any
19 contribution himself. Accordingly, the Commission concludes it has no reason to believe that
20 Rep. Schock violated 52 U.S.C. § 30116(a).

⁶⁰ *See* note 30, *supra*.

⁶¹ Compl. at 4, MUR 6733.

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